

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

IN THE MATTER OF:)	Docket HWCA: P4-02/03-007
)	
Safety-Kleen Systems, Inc.)	CORRECTIVE ACTION
San Jose Service Center)	CONSENT AGREEMENT
1147 North Tenth Street)	
San Jose, California)	
)	
Safety-Kleen Systems, Inc.)	
)	Health and Safety Code
Respondent.)	Sections 25187
)	

INTRODUCTION

1. The Department of Toxic Substances Control (DTSC) and Safety-Kleen Systems, Inc. (Respondent) enter into this Corrective Action Consent Agreement (Consent Agreement) and agree as follows:

1.1. Jurisdiction exists pursuant to Health and Safety Code (HSC) section 25187 which authorizes DTSC to issue an order to require corrective action when DTSC determines that there is or may be a release of hazardous waste or hazardous waste constituents into the environment from a hazardous waste facility.

1.2. The parties enter into this Consent Agreement to avoid the expense of litigation and to carry out promptly the corrective action described below.

1.3. Respondent is the owner and operator of a hazardous waste facility located at 1147 North Tenth Street, San Jose, California (Facility). On June 9, 2000, Respondent and 73 of its affiliates filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). Safety-Kleen continues to operate its business and manage its property as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

1.4. Respondent engaged in the management of hazardous waste pursuant to a Hazardous Waste Facility Permit issued by DTSC on October 10, 1996. Respondent's authorization to operate the Facility as a hazardous waste facility ends on October 10, 2001. On November 1, 2000, Respondent notified DTSC of its intent to close the Facility and operate as a 10-day transfer facility.

1.5. The terms used in this Consent Agreement are as defined in the California Code of Regulations, title 22, section 66260.10, except as otherwise provided.

1.6. Respondent agrees to implement all approved workplans and to undertake all actions required by the terms and conditions of this Consent Agreement.

1.7. Respondent waives any right to request a hearing on this Consent Agreement pursuant to HSC section 25187.

1.8. DTSC and Respondent acknowledge that there are, or were formerly, potential additional sources of groundwater contamination adjacent to the Facility. By entering into this Consent Agreement, Respondent does not accept responsibility for any liability associated with contamination that has migrated onto the Facility from an offsite source.

FINDINGS OF FACT

2.1. A Resource Conservation and Recovery Act (RCRA) Facility Assessment (RFA) and a RFA Addendum were prepared on April 1991 and July 8, 1994 respectively. The documents identify three solid waste management units (SWMUs) and one area of concern (AOC) that either have released or may release hazardous waste or hazardous waste constituents into the environment. The SWMUs and AOCs are as follows:

SWMU No. 1 - Drum Storage Area

SWMU No. 2 - Former Mineral Spirits Aboveground Storage
Tanks

SWMU No. 3 - Former Front Loading Dock Area

AOC No. 1 - Warehouse (Former Gear Shop)

2.2. Based on review of the RFA and the RFA addendum, DTSC concludes that further investigation is needed to determine the nature and extent of contamination at the Facility.

2.3. The hazardous waste and hazardous waste constituents of concern at the Facility are total petroleum hydrocarbons as mineral spirits, and associated volatile organic compounds.

2.4. The hazardous wastes or hazardous waste constituents have migrated or may migrate from the Facility into the environment through the inhalation and groundwater pathways.

2.5. The Facility is located on a 1.26 acre parcel in a mostly industrial area. The service center location is zoned M-1, applicable for commercial and light industrial use. Highway 101 is immediately to the north of the Facility. The nearest residents include several houses approximately 0.2 miles north of the Facility and a house approximately 0.25 miles south of the Facility. There are no surface water bodies on-site. The nearest surface water body is the Coyote

Creek which is approximately 0.9 mile northeast of the Facility. The Guadalupe River is approximately 1 mile to the southwest of the Facility.

PROJECT COORDINATOR

3. Within fourteen (14) days of the effective date of this Consent Agreement, DTSC and Respondent shall each designate a Project Coordinator and shall notify each other in writing of the Project Coordinator selected. Each Project Coordinator shall be responsible for overseeing the implementation of this Consent Agreement and for designating a person to act in his/her absence. All communications between Respondent and DTSC, and all documents, report approvals, and other correspondence concerning the activities performed pursuant to this Consent Agreement shall be directed through the Project Coordinators. Each party may change its Project Coordinator with at least seven (7) days prior written notice. Written notice shall be delivered by certified mail.

WORK TO BE PERFORMED

4. Respondent agrees to perform the work required by this Consent Agreement in accordance with the applicable state and federal laws, their implementing regulations, and the applicable DTSC and the United States Environmental Protection Agency guidance documents.

INTERIM MEASURES (IM)

5.1. If DTSC determines, based on the Facility's groundwater monitoring reports, that Interim Measures are necessary, within 60 days of Respondent's receipt of DTSC's determination, Respondent shall submit to DTSC a Workplan for the Implementation of Interim Measures ("IM Workplan"). The IM Workplan is subject to approval by DTSC and shall provide for the performance of all Interim Measures necessary to achieve stabilization at the Facility. The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan, IM Operation and Maintenance Plan, and IM Plans and Specifications shall be developed in a manner consistent with the Scope of Work for Interim Measures Implementation appended as Attachment 1.

5.2. Respondent shall continue to evaluate the available data and assess the need for Interim Measures. If at any time Respondent identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, Respondent shall notify DTSC Project Coordinator orally within 48 hours of discovery and notify DTSC in writing within 10 days of discovery summarizing the findings, including the immediacy and magnitude of the potential threat to human

health and/or the environment. Within 60 days of receiving DTSC's written request, Respondent shall submit to DTSC an Interim Measures (IM) Workplan for approval. (Note: In some instances, where interim measures must be implemented quickly, DTSC may limit or not require the submittal of plans and specifications.) The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan is subject to approval by DTSC and shall provide for the performance of all Interim Measures necessary to achieve stabilization at the Facility. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize the Respondent to act prior to DTSC's receipt of the IM Workplan. DTSC will provide written confirmation of verbal authorization within 20 days of oral authorization.

5.3. If DTSC identifies an immediate or potential threat to human health and/or the environment, discovers new releases of hazardous waste and/or hazardous waste constituents, or discovers new solid waste management units not previously identified, DTSC will notify Respondent in writing. Within 30 days of receiving DTSC's written notification, Respondent shall submit to DTSC for approval an IM Workplan that identifies Interim Measures that will mitigate the threat. (Note: In some instances, where interim measures must be implemented quickly, DTSC may limit or not require the submittal of plans and specifications.)

The IM Workplan shall include a schedule for submitting to DTSC an IM Operation and Maintenance Plan and IM Plans and Specifications. The IM Workplan is subject to approval by DTSC and shall provide for the performance of all Interim Measures necessary to achieve stabilization at the Facility. If DTSC determines that immediate action is required, DTSC Project Coordinator may orally authorize Respondent to act prior to receipt of the IM Workplan. DTSC will provide written confirmation of verbal authorization within 20 days of oral authorization.

5.4. All IM Workplans shall ensure that the Interim Measures are designed to mitigate current or potential threats to human health and/or the environment, and should, to the extent practicable, be consistent with the objectives of, and contribute to the performance of, any remedy which may be required at the Facility.

5.5. Concurrent with the submission of an IM Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with the Scope of Work for a Health and Safety Plan, Attachment 3.

5.6. Concurrent with the submission of an IM Workplan, Respondent shall submit for DTSC approval a Community Profile in accordance with Attachment 4. Based on the information provided in the Community Profile, if DTSC determines that there is a high level of community concern about the Facility, DTSC may require Respondent to prepare a Public Participation Plan. DTSC will provide written notice of this requirement to Respondent.

RCRA FACILITY INVESTIGATION (RFI)

6.1. Respondent has submitted to DTSC an RFI Workplan for soil.

6.2. Within 90 days of the effective date of this Consent Agreement, Respondent shall submit to DTSC a Current Conditions Report and a Revised RFI Workplan to evaluate the nature and extent of contamination in soil and groundwater at or from the Facility. The Current Conditions Report and the Revised RFI Workplan are subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a RCRA Facility Investigation contained in Attachment 2. DTSC will review the Current Conditions Report and the Revised RFI Workplan and notify Respondent in writing of DTSC's approval or disapproval.

6.3. The Revised RFI Workplan must detail the methodology to: (1) gather data needed to make decisions on interim measures/ stabilization during the early phases of the RCRA Facility Investigation; (2) identify and characterize all sources of contamination; (3) define the nature, degree and extent of contamination; (4) define the rate of movement and direction of contamination flow; (5) characterize the potential pathways of contaminant migration; (6) identify actual or potential human and/or ecological receptors; and (7) support development of alternatives from which a corrective measure will be selected by DTSC. A specific schedule for implementation of all activities shall be included in the Revised RFI Workplan.

6.4. Respondent shall submit a RFI Report to DTSC for approval in accordance with DTSC-approved Workplan schedule. The RFI Report shall be developed in a manner consistent with the Scope of Work for a RCRA Facility Investigation contained in Attachment 2. If there is a phased investigation, separate Reports and a report that summarizes the findings from all parts of the RFI must be submitted to DTSC. DTSC will review the Report(s) and notify Respondent in writing of DTSC's approval or disapproval.

6.5. Concurrent with the submission of a Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with Attachment 3. If Workplans for both an IM and RFI are required by this Consent Agreement, Respondent may submit a single Health and Safety Plan that addresses the combined IM and RFI activities.

6.6. Concurrent with the submission of the Revised RFI Workplan, Respondent shall submit for DTSC approval a Community Profile in accordance with Attachment 4. Based on the information provided in the Community Profile and any Supplement to the Community Profile, DTSC will determine the level of community interest. Depending on the level of community interest, DTSC will decide which public participation activities are necessary. These activities may include a RFI Fact Sheet, a public participation plan, a public notice and a public meeting.

6.7 Based on the information available to DTSC, Respondent may be required to conduct a Risk Assessment to evaluate potential human health risk,

ecological risk and indoor air risk and to establish site-specific action levels and cleanup standards. If DTSC determines that a Risk Assessment is required, Respondent shall submit to DTSC for approval a Risk Assessment Workplan within 90 days of receipt of DTSC's determination. Respondent shall submit to DTSC for approval a Risk Assessment Report in accordance with DTSC-approved Risk Assessment Workplan schedule.

CORRECTIVE MEASURES STUDY (CMS)

7.1. Respondent shall prepare a Corrective Measures Study if contaminant concentrations exceed current health-based action levels and/or if DTSC determines that the contaminant releases pose a potential threat to human health and/or the environment.

7.2. Within 60 days of DTSC's approval of the Revised RFI Report required in sections 6.3, Respondent, at DTSC's written request pursuant to Section 7.1, shall submit a CMS Workplan to DTSC. The CMS Workplan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study contained in Attachment 5.

7.3. The CMS Workplan shall detail the methodology for developing and evaluating potential corrective measures to remedy any contamination at the Facility. The CMS Workplan shall identify the potential corrective measures, including any innovative technologies, that may be used for the containment, treatment, remediation, and/or disposal of contamination.

7.4. If deemed necessary by DTSC, Respondent shall prepare treatability studies for all potential corrective measures that involve treatment except where Respondent can demonstrate to DTSC's satisfaction that they are not needed. The CMS Workplan shall include, at a minimum, a summary of the proposed treatability study including a conceptual design, a schedule for submitting a treatability study workplan, or Respondent's justification for not proposing a treatability study.

7.5. Respondent shall submit a CMS Report to DTSC for approval in accordance with DTSC-approved CMS Workplan schedule. The CMS Report shall be developed in a manner consistent with the Scope of Work for a Corrective Measures Study contained in Attachment 5. DTSC will review the CMS Report and notify Respondent in writing of DTSC's approval or disapproval.

REMEDY SELECTION

8.1. DTSC will provide the public with an opportunity to review and comment on the final draft of the CMS Report, DTSC's proposed corrective measures for the Facility, and DTSC's justification for selection of such corrective measures. Based on the information provided in the Community Profile and any Supplement to the Community Profile, if DTSC determines that there is a high level of community concern about the Facility, DTSC may require Respondent to

prepare a Public Participation Plan and may conduct a public hearing to obtain comments. DTSC will provide written notice of this requirement to Respondent.

8.2. Following the public comment period, DTSC will select final corrective measures or require Respondent to revise the CMS Report and/or perform additional corrective measures studies

8.3. DTSC will notify Respondent of the final corrective measures selected by DTSC in the Final Decision and Response to Comments. The notification will include DTSC's reasons for selecting the corrective measures.

CORRECTIVE MEASURES IMPLEMENTATION (CMI)

9.1. Within 60 days of Respondent's receipt of notification of DTSC's selection of the corrective measures, Respondent shall submit to DTSC a Corrective Measures Implementation (CMI) Workplan. The CMI Workplan is subject to approval by DTSC and shall be developed in a manner consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment 6.

9.2. Concurrent with the submission of a CMI Workplan, Respondent shall submit to DTSC a Health and Safety Plan in accordance with Attachment 3.

9.3. Concurrent with the submission of a CMI Workplan, Respondent shall submit for DTSC approval a Community Profile in accordance with Attachment 4. Based on the information provided in the Community Profile and any Supplement to the Community Profile, if DTSC determines that there is a high level of community concern about the Facility, DTSC may require Respondent to prepare a Public Participation Plan.

9.4. The CMI program shall be designed to facilitate the design, construction, operation, maintenance, and monitoring of corrective measures at the Facility. In accordance with the schedule contained in the approved CMI Workplan, Respondent shall submit to DTSC the documents listed below. These documents shall be developed in a manner consistent with the Scope of Work for Corrective Measures Implementation contained in Attachment 6.

- a. Operation and Maintenance Plan
- b. Draft Plans and Specifications
- c. Final Plans and Specifications
- d. Construction Workplan
- e. Construction Completion Report
- f. Corrective Measures Completion Report

9.5. DTSC will review all required CMI documents and notify Respondent in writing of DTSC's approval or disapproval.

9.6. As directed by DTSC, within 90 days of DTSC's approval of all required CMI documents, Respondent shall establish a financial assurance mechanism for Corrective Measures Implementation. The financial assurance

mechanisms may include any mechanism as described in the California Code of Regulations, title 22, section 66265.143 or any other mechanism acceptable to DTSC. The mechanism shall be established to allow DTSC access to the funds to undertake Corrective Measures Implementation tasks if Respondent is unable or unwilling to undertake the required actions.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

10. DTSC must comply with the California Environmental Quality Act (CEQA) insofar as activities required by this Consent Agreement are projects subject to CEQA. Respondent shall provide all information necessary to facilitate any CEQA analysis. DTSC will make an initial determination regarding the applicability of CEQA. If the activities are not exempt from CEQA, DTSC will conduct an Initial Study. Based on the results of the Initial Study, DTSC will determine if a Negative Declaration or an Environmental Impact Report (EIR) should be prepared. DTSC will prepare and process any such Negative Declaration. However, should DTSC determine that an EIR is necessary, such an EIR would be prepared under a separate agreement between DTSC and Respondent.

DTSC APPROVAL

11.1. Respondent shall revise any workplan, report, specification, or schedule in accordance with DTSC's written comments. Respondent shall submit to DTSC any revised documents by the due date specified by DTSC. Revised submittals are subject to DTSC's approval or disapproval.

11.2. Upon receipt of DTSC's written approval, Respondent shall commence work and implement any approved workplan in accordance with the schedule and provisions contained therein.

11.3. Any DTSC approved workplan, report, specification, or schedule required under this Consent Agreement shall be deemed incorporated into this Consent Agreement.

11.4. Verbal advice, suggestions, or comments given by DTSC representatives will not constitute an official approval or decision.

SUBMITTALS

12.1. Beginning with the first full month following the effective date of this Consent Agreement, Respondent shall provide DTSC with quarterly progress reports of corrective action activities conducted pursuant to this Consent Agreement. Progress reports are due in the first week of the fourth month after the effective date, and every quarter thereafter. The progress reports shall conform to the Scope of Work for Progress Reports contained in Attachment 7. DTSC may adjust the frequency of progress reporting to be

consistent with site-specific activities. Any adjustments in the frequency of progress reports shall be provided by DTSC to Respondent in writing.

12.2. Any report or other document submitted by Respondent pursuant to this Consent Agreement shall be signed and certified by the project coordinator, a responsible corporate officer, or a duly authorized representative.

12.3. The certification required by paragraph 12.2 above, shall be in the following form:

I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those portions of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared at my direction in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted.

Signature: _____

Name: _____

Title: _____

Date: _____

12.4. Respondent shall, unless otherwise directed by DTSC in writing, provide two copies of all documents, including but not limited to, workplans, reports, and correspondence of fifteen (15) pages or longer. Submittals specifically exempted from this copy requirement are all progress reports and correspondence of less than 15 pages, of which one copy is required.

12.5. Unless otherwise specified, all reports, correspondence, approvals, disapprovals, notices, or other submissions relating to this Consent Agreement shall be in writing and shall be sent to the current Project Coordinators.

PROPOSED CONTRACTOR/CONSULTANT

13. All work performed pursuant to this Consent Agreement shall be under the direction and supervision of a professional engineer or registered geologist, registered in California, with expertise in hazardous waste site cleanup. Respondent's contractor or consultant shall have the technical expertise sufficient to fulfill his or her responsibilities. Within fourteen (14) days of the effective date of this Consent Agreement, Respondent shall notify DTSC Project Coordinator in writing of the name, title, and qualifications of the professional engineer or registered geologist and of any contractors or

consultants and their personnel to be used in carrying out the terms of this Consent Agreement. DTSC may disapprove of Respondent's contractor and/or consultant.

ADDITIONAL WORK

14. DTSC may determine or Respondent may propose that certain tasks, including investigatory work, engineering evaluation, or procedure/methodology modifications are necessary in addition to, or in lieu of, the tasks and deliverables included in any part of DTSC-approved workplans. DTSC shall request in writing that Respondent perform the additional work and shall specify the basis and reasons for DTSC's determination that the additional work is necessary. Within fourteen (14) days after the receipt of such determination, Respondent may confer with DTSC to discuss the additional work DTSC has requested. If required by DTSC, Respondent shall submit a workplan to DTSC for the additional work. Such workplan shall be submitted to DTSC within thirty (30) days of receipt of DTSC's determination or according to an alternate schedule established by DTSC. Upon approval of a workplan, Respondent shall implement it in accordance with the provisions and schedule contained therein. The need for, and disputes concerning, additional work are subject to the dispute resolution procedures specified in this Consent Agreement.

QUALITY ASSURANCE

15.1. All sampling and analyses performed by Respondent under this Consent Agreement shall follow applicable DTSC and USEPA guidance for sampling and analysis. Workplans shall contain quality assurance/quality control and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the approved workplans must be approved by DTSC prior to implementation, must be documented, including reasons for the deviations, and must be reported in the applicable report (e.g., RFI Report).

15.2. The names addresses, and telephone number of the California State certified analytical laboratories Respondent proposes to use must be specified in the applicable workplans.

SAMPLING AND DATA/DOCUMENT AVAILABILITY

16.1. Respondent shall submit to DTSC upon request the results of all sampling and/or tests or other data generated by its employees, agents, consultants, or contractors pursuant to this Consent Agreement.

16.2. Respondent shall notify DTSC in writing at least seven (7) days prior to beginning each separate phase of field work approved under any workplan required by this Consent Agreement. If Respondent believes it must

commence emergency field activities without delay, Respondent may seek emergency telephone authorization from DTSC Project Coordinator or, if the Project Coordinator is unavailable, his/her Branch Chief, to commence such activities immediately.

16.3. At the request of DTSC, Respondent shall provide or allow DTSC or its authorized representative to take split or duplicate samples of all samples collected by Respondent pursuant to this Consent Agreement. Similarly, at the request of Respondent, DTSC shall allow Respondent or its authorized representative to take split or duplicate samples of all samples collected by DTSC under this Consent Agreement.

ACCESS

17. Subject to the Facility's reasonable security and safety procedures, Respondent agrees to provide DTSC and its representatives access at all reasonable times to the Facility and any other property to which access is required for implementation of this Consent Agreement and shall permit such persons to inspect and copy all records, files, photographs, documents, including all sampling and monitoring data, that pertain to work undertaken pursuant to this Consent Agreement and that are within the possession or under the control of Respondent or its contractors or consultants.

RECORD PRESERVATION

18.1. Respondent shall retain, during the pendency of this Consent Agreement and for a minimum of six (6) years after its termination, all data, records, and documents that relate in any way to the performance of this Consent Agreement or to hazardous waste management and/or disposal at the Facility. Respondent shall notify DTSC in writing ninety (90) days prior to the destruction of any such records, and shall provide DTSC with the opportunity to take possession of any such records. Such written notification shall reference the effective date, caption, and docket number of this Consent Agreement and shall be addressed to:

Chief
Geology and Corrective Action Branch
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

18.2. If Respondent retains or employs any agent, consultant, or contractor for the purpose of carrying out the terms of this Consent Agreement, Respondent will require any such agents, consultants, or contractors to provide

Respondent a copy of all documents produced pursuant to this Consent Agreement.

18.3. All documents required to be retained pursuant to this Consent Agreement shall be stored in a central location at the Facility to afford ease of access by DTSC and its representatives.

DISPUTE RESOLUTION

19.1. The parties agree to use their best efforts to resolve all disputes informally. The parties agree that the procedures contained in this section are the sole administrative procedures for resolving disputes arising under this Consent Agreement. If Respondent fails to follow the procedures contained in this section, it shall have waived its right to further consideration of the disputed issue.

19.2. If Respondent disagrees with any written decision by DTSC pursuant to this Consent Agreement, Respondent's Project Coordinator shall orally notify DTSC Project Coordinator of the dispute. The Project Coordinators shall attempt to resolve the dispute informally.

19.3. If the Project Coordinators cannot resolve the dispute informally, Respondent may pursue the matter formally by placing its objection in writing. Respondent's written objection must be forwarded to Chief, Geology and Corrective Action Branch, Department of Toxic Substances Control, with a copy to DTSC Project Coordinator. The written objection must be mailed to the Branch Chief within fourteen (14) days of Respondent's receipt of DTSC's written decision. Respondent's written objection must set forth the specific points of the dispute and the basis for Respondent's position.

19.4. DTSC and Respondent shall have fourteen (14) days from DTSC's receipt of Respondent's written objection to resolve the dispute through formal discussions (the "Formal Dispute Discussion Period"). This period may be extended by DTSC for good cause. During such period, Respondent may meet or confer with DTSC to discuss the dispute.

19.5. After the Formal Discussion Period, DTSC will provide Respondent with its written decision on the dispute. DTSC's written decision will reflect any agreements reached during the formal discussion period and be signed by Chief, Geology and Corrective Action Branch, Department of Toxic Substances Control, or his/her designee.

19.6. During the pendency of all dispute resolution procedures set forth above, Respondent shall continue to perform all work required by this Consent Agreement to the extent that such work is not affected by the dispute. However, during the pendency of all dispute resolution procedures set forth above, the time periods for completion of any work required by this Consent Agreement that are directly affected by such dispute shall be extended for a period of time not to exceed the actual time taken to resolve the dispute. The existence of a dispute shall not excuse, toll, or suspend any other compliance obligation or deadline required pursuant to this Consent Agreement.

RESERVATION OF RIGHTS

20.1. DTSC reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this Consent Agreement. Respondent reserves all of its statutory and regulatory rights, defenses and remedies, as they may arise under this Consent Agreement. This Consent Agreement shall not be construed as a covenant not to sue, release, waiver, or limitation on any rights, remedies, powers, or authorities, civil or criminal, that DTSC has under any statutory, regulatory, or common law authority.

20.2. DTSC reserves the right to disapprove of work performed by Respondent pursuant to this Consent Agreement and to request that Respondent perform additional tasks.

20.3. DTSC reserves the right to perform any portion of the work consented to herein or any additional site characterization, feasibility study, and/or remedial actions it deems necessary to protect human health and/or the environment. DTSC may exercise its authority under any applicable state or federal law or regulation to undertake response actions at any time. DTSC reserves its right to seek reimbursement from Respondent for costs incurred by the State of California with respect to such actions. DTSC will notify Respondent in writing as soon as practicable regarding the decision to perform any work described in this section.

20.4. If DTSC determines that activities in compliance or noncompliance with this Consent Agreement have caused or may cause a release of hazardous waste and/or hazardous waste constituents, or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work required, DTSC may order Respondent to stop further implementation of this Consent Agreement for such period of time as DTSC determines may be needed to abate or redress such release or threat and/or to undertake any action which DTSC determines is necessary to abate such release or threat. The deadlines for any actions required of Respondent under this Consent Agreement affected by the order to stop work shall be extended to take into account DTSC's actions.

20.5. This Consent Agreement is not intended to be nor shall it be construed to be a permit. This Consent Agreement is not a substitute for, and does not preclude DTSC from requiring, any hazardous waste facility permit, post closure permit, closure plan or post closure plan. The parties acknowledge and agree that DTSC's approval of any workplan, plan, and/or specification does not constitute a warranty or representation that the workplans, plans, and/or specifications will achieve the required cleanup or performance standards. Compliance by Respondent with the terms of this Consent Agreement shall not

relieve Respondent of its obligations to comply with HSC or any other applicable local, state, or federal law or regulation.

OTHER CLAIMS

21. Except as provided in this Consent Agreement, nothing in this Consent Agreement shall constitute or be construed as a release by DTSC or Respondent from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken or migrating from the Facility.

OTHER APPLICABLE LAWS

22. All actions required to be taken pursuant to this Consent Agreement shall be undertaken in accordance with the requirements of all local, state, and federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

REIMBURSEMENT OF DTSC'S COSTS

23.1. Respondent shall pay DTSC's costs incurred in the implementation of this Consent Agreement.

23.2. An estimate of DTSC's costs is attached as Exhibit A showing the amount of \$45,747.00. It is understood by the parties that this amount is only an estimate for those activities shown in Exhibit A, and may differ from the actual costs incurred by DTSC in implementing this Consent Agreement, and does not represent the total costs incurred by DTSC in overseeing all activities required at the Facility under this Consent Agreement. DTSC will provide additional cost estimates for the subsequent phases of work, as the work progresses.

23.3. Respondent shall make an advance payment to DTSC in the amount of \$ 25,000.00 within 30 days of the effective date of this Consent Agreement. If the advance payment exceeds DTSC's complete costs under this Agreement, DTSC will refund the balance within 120 days after the execution of the Acknowledgement of Satisfaction pursuant to Section 25 of this Consent Agreement.

23.4. DTSC will provide Respondent with a billing statement at least quarterly, which will include the name of the employee, identification of the activity, the amount of time spent on each activity, and the hourly rate charged. If Respondent does not pay an invoice within 60 days, the amount is subject to interest as provided by HSC section 25360.1.

23.5. DTSC will retain all costs records associated with the work performed under this Consent Agreement as required by state law. DTSC will make all documents which support DTSC's cost determination available for inspection upon request, as provided by the Public Records Act. In addition, upon request by Respondent, DTSC shall provide daily logs of the work performed by DTSC personnel.

23.6. Any dispute concerning DTSC's costs incurred pursuant to this Consent Agreement is subject to the Dispute Resolution provision of this Consent Agreement and the dispute resolution procedures as established pursuant to Health and Safety Code section 25269.2. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

23.7. All payments shall be made within 30 days of the date of the billing statement by check payable to the Department of Toxic Substances Control and shall be sent to:

Accounting Unit
Department of Toxic Substances Control
P. O. Box 806
Sacramento, California 95812-0806

All checks shall reference the name of the Facility, the Respondent's name and address, and the docket number of this Consent Agreement. Copies of all checks and letters transmitting such checks shall be sent simultaneously to DTSC's Project Coordinator.

MODIFICATION

24.1. This Consent Agreement may be modified by mutual agreement of the parties. Any agreed modifications shall be in writing, shall be signed by both parties, shall have as their effective date the date on which they are signed by DTSC, and shall be deemed incorporated into this Consent Agreement.

24.2. Any requests for revision of an approved workplan requirement must be in writing. Such requests must be timely and provide justification for any proposed workplan revision. DTSC has no obligation to approve such requests, but if it does so, such approval will be in writing and signed by the Chief, Geology and Corrective Action Branch, Department of Toxic Substances Control, or his or her designee. Any approved workplan modification shall be incorporated by reference into this Consent Agreement.

TERMINATION AND SATISFACTION

25. The provisions of this Consent Agreement shall be deemed satisfied upon the execution by both parties of an Acknowledgment of Satisfaction (Acknowledgment). DTSC will prepare the Acknowledgment for

Respondent's signature. The Acknowledgment will specify that Respondent has demonstrated to the satisfaction of DTSC that the terms of this Consent Agreement including payment of DTSC's costs have been satisfactorily completed. The Acknowledgment will affirm Respondent's continuing obligation to preserve all records after the rest of the Consent Agreement is satisfactorily completed.

EFFECTIVE DATE

26. The effective date of this Consent Agreement shall be the date on which this Consent Agreement is signed by all the parties. Except as otherwise specified, "days" means calendar days.

SIGNATORIES

27. Each undersigned representative certifies that he or she is fully authorized to enter into this Consent Agreement.

DATE: 5/30/03 BY: //Original signed by//
Virgil W. Duffie ✓ / ✓
Senior Corporate Counsel
Safety-Kleen Corp.
Representing Respondent

DATE: 6/4/03 BY: //Original signed by//
Karen Baker, Chief
Geology and Corrective Action Branch
Department of Toxic Substances Control